**FIRDAUS AZIZ ABDULLAH** A

**v.**

**PP**

COURT OF APPEAL, PUTRAJAYA B
ABDUL WAHAB PATAIL JCA
ZAHARAH IBRAHIM JCA
MOHAMAD ARIFF YUSOF JCA
[CRIMINAL APPEAL NO: Q-09-20-01-2012]
4 JUNE 2013 C

***ARMS & EXPLOSIVES:*** *Arms Act - Seizures and forfeitures - Shotgun and firearms licence seized - Application to seek return of shotgun and license under s. 53 Arms Act 1960 - Circumstances in which shotgun obtained - Whether by "dubious and surreptitious means" - Duplicate licenses for firearms given while shotgun in possession of police - Whether power to issue and renew licenses must be under Arms Act 1960 and not under the repealed Sabah and Sarawak (Executive Powers) (Shotguns) Order 1977 - Arms Licensing Regulations 1961, reg. 6 - Requirement of - Whether application should be allowed* D E

On 15 March 2000, the appellant had surrendered one shotgun "Winchester" together with a firearms licence at the Bintulu Police Station. The appellant was promptly arrested and the shotgun and licence seized. A police investigation ensued but there was no indication that any prosecution was instituted against the appellant for any criminal offence. Subsequently, the appellant sought the return of the shotgun and the licence to him under s. 53 of the Arms Act 1960. The Sessions Court judge found that the appellant was not an innocent purchaser of the shotgun and dismissed his application. The appellant appealed to the High Court against the Sessions Court's decision. The Judicial Commissioner of the High Court dismissed the appellant's appeal and confirmed the Sessions Court Judge order for the forfeiture of the shotgun under s. 53 of the Arms Act 1960. Thus, the appellant appealed. The issue that arose was whether the decision not to grant the application by the appellant for the return of the shotgun and its licence to him was correctly made by the Sessions Court Judge and correctly confirmed by the Judicial Commissioner. F G H I

**Held (dismissing appeal)**
**Per Zaharah Ibrahim JCA delivering the judgment of the court:**

**(1)** The proviso to s. 53(1) of the Arms Act 1960 gives the Sessions Court Judge or Magistrate the power to order the release of any seized arms and/or ammunition to the person named in that order. He/she 'may' order such release, regardless of whether any person had been convicted of the offence which led to the arms and/or ammunition being seized in the first place. However, s. 53 is silent as to what matters need to be taken into consideration by the Sessions Court Judge or Magistrate in making a decision whether to release or not to release any arms/ammunition to any person. It is also silent as to the procedure to be followed by the Sessions Court Judge or Magistrate in the making of such decision. (paras 24-26)

**(2)** In the case before us, there was an application filed by the appellant and there were affidavits filed and deponents of the affidavits were cross-examined and re-examined. There was sufficient information for both the Sessions Court Judge and the Judicial Commissioner to make a decision as to whether they ought to make an order to release the shotgun to the appellant. The Sessions Court Judge and the Judicial Commissioner had expressed grave concerns as to how an arms licence for a shotgun which had been seized and ordered administratively to be destroyed in the year 2000 could be replaced and subsequently renewed every year. The copy of the original licence showed that the licence was issued in Sibu on 16 December 1998. However, on 21 April 2006, the Licensing Officer at Bintulu issued a duplicate licence to replace the licence reported by the appellant in his police report lodged in 2004 to be lost. Both the copy of the original licence and the duplicate issued in 2006 were issued under the Arms and Explosives Ordinance of Sarawak which was already repealed since 1977. While Sarawak executive authorities have the power to issue and renew licences for arms and ammunition, that power is limited to shotguns and its ammunition and must be under the Arms Act 1960, not under the repealed Ordinance. This was manifestly clear from the provisions of Sabah and Sarawak (Executive Powers) (Shotguns) Order 1977. (paras 27, 28, 31 & 32)

**(3)** There was nothing in the provisions of the Sabah and Sarawak (Executive Powers) (Shotguns) Order 1977 allowing the licensing officer who is granted power under that Order to issue or renew an arms licence under the Arms Act 1960 to dispense with the requirement of reg. 6 of the Arms Licensing Regulations 1961 which provides that no licence or permit shall be issued or renewed unless the arms in respect of which the licence or permit is required be produced to the licensing officer. (paras 34 & 35)

**(4)** The Sessions Court Judge did not err in dismissing the appellant's application for the release of the shotgun to him, and consequently the Judicial Commissioner did not err in confirming that decision. There were no grounds to disturb the findings. The Sessions Court Judge and the Judicial Commissioner had taken into account the circumstances in which the shotgun was obtained by the appellant and, more importantly, the circumstances in which the replacement and subsequent renewals of the licence for the shotgun were applied for and made. The Sessions Court Judge found those circumstances were such that they gave rise to suspicion that the shotgun was obtained by "dubious and surreptitious means" and the Judicial Commissioner had agreed. (para 29)

***Bahasa Malaysia*** *Translation Of Headnotes*

Pada 15 Mac 2000, perayu telah menyerahkan satu senapang patah "Winchester" bersama-sama dengan lesen senjata api di Balai Polis Bintulu. Perayu telah ditangkap dan senapang patah serta lesen tersebut disita. Satu penyiasatan polis telah dijalankan tetapi tiada tanda bahawa apa-apa pendakwaan telah dimulakan terhadap perayu bagi mana-mana kesalahan jenayah. Seterusnya, perayu memohon untuk pemulangan senapang patah dan lesen tersebut di bawah s. 53 Akta Senjata 1960. Hakim Mahkamah Sesyen mendapati bahawa perayu bukanlah seorang pembeli senapang patah yang tidak bersalah dan menolak permohonan tersebut. Perayu memohon kepada Mahkamah Tinggi terhadap keputusan Mahkamah Sesyen. Pesuruhjaya Kehakiman Mahkamah Tinggi menolak rayuan perayu dan mengesahkan perintah Hakim Mahkamah Sesyen bagi perampasan senapang patah di bawah s. 53 Akta Senjata 1960. Oleh itu, perayu merayu. Isu yang timbul adalah sama ada keputusan untuk tidak membenarkan permohonan

perayu bagi pemulangan senapang patah dan lesen tersebut telah diputuskan dengan betul oleh Hakim Mahkamah Sesyen dan telah dengan betul disahkan oleh Pesuruhjaya Kehakiman.

**Diputuskan (menolak rayuan)**

**Oleh Zaharah Ibrahim HMR menyampaikan penghakiman mahkamah:**

**(1)** Peruntukan s. 53(1) Akta Senjata 1960 memberikan Hakim Mahkamah Sesyen dan Majistret kuasa untuk membuat perintah pelepasan senjata dan/atau peluru kepada orang yang dinamakan dalam perintah tersebut. Beliau "boleh" membuat perintah sebegitu, tidak kira sama ada orang itu telah disabitkan kesalahan yang menyebabkan senjata dan/atau peluru itu disita. Walau bagaimanapun, s. 53 tidak menyatakan apa-apa mengenai perkara-perkara yang perlu diambil kira oleh Hakim Mahkamah Sesyen atau Majistret apabila membuat keputusan sama ada melepaskan atau tidak senjata dan/atau peluru kepada sesiapa sahaja. Ia juga tidak menyatakan apa-apa mengenai prosedur yang harus diikuti oleh Hakim Mahkamah Sesyen atau Majistret dalam membuat keputusan sebegitu.

**(2)** Dalam kes ini, terdapat permohonan yang difailkan oleh perayu dan juga terdapat afidavit yang difailkan dan deponen-deponen afidavit telah disoalbalas atau diperiksa semula. Terdapat maklumat yang mencukupi bagi kedua-dua Hakim Mahkamah Sesyen dan Pesuruhjaya Kehakiman untuk membuat keputusan sama ada mereka perlu membuat perintah untuk melepaskan senapang patah kepada perayu. Hakim Mahkamah Sesyen dan Pesuruhjaya Kehakiman telah melahirkan rasa kebimbangan berkenaan bagaimana lesen senjata untuk senapang patah yang telah disita dan telah diperintahkan untuk dimusnahkan pada tahun 2000 boleh digantikan dan kemudiannya diperbaharui setiap tahun. Salinan lesen asal menunjukkan bahawa lesen telah dikeluarkan di Sibu pada 16 Disember 1998. Walau bagaimanapun, pada 21 April 2006, Pegawai Pelesenan di Bintulu telah mengeluarkan salinan lesen untuk menggantikan lesen hilang yang dilaporkan oleh perayu dalam laporan polisnya yang dibuat pada 2004. Kedua-dua salinan lesen asal dan lesen yang dikeluarkan pada tahun 2006 telah dikeluarkan di bawah Ordinan Senjata dan Bahan Letupan Sarawak yang

sudah dimansuhkan pada tahun 1977. Walaupun pihak berkuasa eksekutif Sarawak mempunyai kuasa untuk mengeluarkan dan untuk memperbaharui lesen untuk senjata dan peluru, kuasa itu telah dihadkan kepada senapang patah dan pelurunya dan ia harus dibuat di bawah Akta Senjata 1960, dan bukan di bawah Ordinan yang sudah dimansuhkan. Ini adalah jelas berdasarkan peruntukan Perintah Sabah dan Sarawak (Kuasa Eksekutif) (Senapang Patah) 1977.

**(3)** Tiada mana-mana dalam peruntukan Perintah Sabah dan Sarawak (Kuasa Eksekutif) (Senapang Patah) 1977 yang membenarkan pegawai pelesenan yang diberikan kuasa di bawah perintah mengeluarkan atau memperbaharui lesen senjata di bawah Akta Senjata 1960 untuk mengetepikan keperluan per. 6 Peraturan-Peraturan Pelesenan Senjata 1961 yang memperuntukkan bahawa tiada lesen atau permit boleh dikeluarkan atau diperbaharui melainkan senjata yang mana lesen atau permit diperlukan untuk dikemukakan kepada pegawai pelesenan.

**(4)** Hakim Mahkamah Sesyen tidak khilaf apabila menolak permohonan perayu untuk pelepasan senapang patah itu kepadanya, dan Pesuruhjaya Kehakiman tidak khilaf dalam pengesahan keputusan tersebut. Tiada alasan untuk mengganggu dapatan tersebut. Hakim Mahkamah Sesyen dan Pesuruhjaya Kehakiman telah mengambil dalam pertimbangan keadaan-keadaan bagaimana senapang patah itu diperolehi oleh perayu dan, yang lebih penting, keadaan-keadaan bagaimana penggantian dan pembaharuan lesen berikutnya dipohon dan dibuat. Hakim Mahkamah Sesyen mendapati bahawa hal keadaan seperti itu menimbulkan syak bahawa senapang patah tersebut telah diperolehi melalui "cara-cara yang meragukan dan dalam senyap dan tersembunyi" dan Pesuruhjaya Kehakiman bersetuju.

**Case(s) referred to:**

*Director of Customs Federal Territory v. Ler Cheng Chye (Liquidator of Castwell Sdn Bhd (In Liquidation)) [1995] 3 CLJ 316 SC* ***(refd)***

**Legislation referred to:**

Arms Act 1960, s. 53(1)
Arms Licensing Regulations 1961, reg. 6
Criminal Procedure Code, ss. 407, 413
Malaysia Act 1963, s. 74

A *For the appellant - Ranbir Singh Sangha; M/s Ranbir S Sangha & Co*
*For the respondent - Musli Ab Hamid; DPP*

*[Editor's note: For the High Court judgment, please see Firdaus Aziz Abdullah @ Wong Pak Lung v. PP & Anor [2011] 1 LNS 1544.]*

B *Reported by Suhainah Wahiduddin*

## JUDGMENT

C **Zaharah Ibrahim JCA:**

### Introduction

**[1]** This is the appellant's appeal against the decision of the High Court of Sabah and Sarawak at Bintulu dismissing his appeal to that High Court against the decision of the Sessions Court at Bintulu and affirming the order of the Sessions Court under s. 53 of the Arms Act 1960.

D

### Background Facts

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**[2]** The background facts of this appeal need to be set out in some detail.

**[3]** Police Report No: 1442/2000, lodged at the Bintulu Police Station on 15 March 2000 (supplementary record of appeal, pp. 102 and 106) show that on that date one Wong Pak Lung (the appellant) had surrendered one 'DBBL 12 bore shotgun No. PK 431075 "Winchester"' together with one firearms licence No. 457/6285. The report also states that the appellant was promptly arrested and the shotgun and licence seized. A police investigation ensued but there was no indication that any prosecution was instituted against the appellant for any criminal offence.

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**[4]** The appellant then filed an application, under ss. 413 and/or 407 of the Criminal Procedure Code, in the Magistrate's Court at Bintulu (Criminal Application No: 89-203-2009 (BTU)) seeking the return to him of the shotgun and licence, and other ancillary orders. The application was made by way of a notice of motion, supported by the appellant's affidavit. The Public Prosecutor and the officer in charge of the Bintulu Police District (the "KPD") were named as respondents. They opposed the application.

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**[5]** The Magistrate made an order on 22 March 2010 ordering the respondents to file in a proper application before the Magistrate's Court within 14 days from that date to determine the legality of the shotgun, failing which an order in terms of the appellant's application would be granted. Pending such eventuality, the shotgun was to be kept in the respondents' custody. A further order was made requiring a representative of the KPD to transport the shotgun to the licensing officer "and/or district officer Bintulu" for such officer/officers to inspect the shotgun and exercise his/their discretion whether or not to renew the licence to possess arms and ammunition under the Arms Act 1960.

**[6]** The Public Prosecutor applied to the learned High Court Judge for revision of the order of the Magistrate at Bintulu and on 24 August 2010 the learned High Court Judge at Bintulu set aside the orders of the Magistrate and granted liberty to the Public Prosecutor and the KPD to pursue their "request for an inquiry to be held before the Sessions' Court".

**[7]** However, what subsequently transpired was that instead of the Public Prosecutor and the KPD making a fresh request for an inquiry, proceedings began in the Sessions Court on 13 October 2010 as a continuation of the proceedings in the Magistrate's Court. The appellant remained as the applicant for the return of the shotgun, but this time under s. 53 of the Arms Act 1960.

**[8]** The affidavits affirmed and filed by the appellant in the Magistrate's Court were tendered as evidence and the appellant was cross-examined and re-examined on his affidavits. Apart from the appellant, another witness was called in support of his application. He was a senior clerk in the Bintulu District Office. He was the person tasked with the duty of supervising the renewal of firearms licences.

**[9]** The deponent of the affidavit filed in the Magistrate's Court by the Public Prosecutor opposing the appellant's application was called as a witness by the Public Prosecutor. His affidavit was admitted as evidence and he was also cross-examined and re-examined.

**[10]** The learned Sessions Court Judge delivered his decision on 8 April 2011. The learned Sessions Court Judge dismissed the appellant's application for the return of the shotgun. A close reading of the learned Sessions Court Judge's decision shows that the learned Sessions Court Judge found the appellant to be not an innocent purchaser of the shotgun.

**[11]** The appellant appealed to the High Court against that decision. His notice of appeal states that he appeals against the order of the learned Sessions Court Judge "whereby the appellant's application under s. 53 of the Arms Act 1960 and s. 413 and/or s. 407 of the Criminal Procedure Code was dismissed".

**[12]** On 30 November 2011 the learned Judicial Commissioner of the High Court at Bintulu delivered his decision. The sealed order of that decision shows that the learned Judicial Commissioner made the following orders in respect of the appeal:

(i) The appeal by the appellant be dismissed; and

(ii) The learned Sessions Judge's order for the forfeiture of the shotgun under s. 53 of the Arms Act 1960 is hereby confirmed.

**The Appeal Before The Court Of Appeal**

**[13]** The appellant filed a notice of appeal against the decision of the learned Judicial Commissioner given on 30 November 2011. This is the appeal before us.

**[14]** The notice of appeal states that the appeal is against the decision of the learned Judicial Commissioner "whereby the appellant's application under s. 53 of the Arms Act 1960 and s. 413 and/or s. 407 of the Criminal Procedure Code was struck out". We believe by "struck out" the appellant meant "dismissed". We shall deal with this appeal upon such footing.

**The Law**

**[15]** The Arms Act 1960, which came into force in Sarawak on 1 September 1977 by virtue of the Arms and Explosives (Extension) Order 1977 made under s. 74 of the Malaysia Act 1963, is a specific Act dealing with arms, imitation arms and

ammunition. It is also a later act than the Criminal Procedure Code (which was enacted in 1935 and came into force in Sarawak on 10 January 1976).

**[16]** In the case of *Director of Customs Federal Territory v. Ler Cheng Chye (Liquidator of Castwell Sdn Bhd (In Liquidation))* [1995] 3 CLJ 316, Wan Yahya bin Pawan Teh FCJ, delivering the judgment of the Federal Court said, at p. 325:

> The general rule of construction is such if having made the general act the Legislature afterwards makes a special provision in conflict with the earlier legislation the special provision so in conflict is treated as a mere exception to the general provision - *Corporation of Madras v. Electric Tramways Ltd.* AIR 1931 Madras 152 - 156 wherein Reilly, J remarked;
>
> > If the special Act is made after the general Act, the position is even simpler. Having made the general Act if the Legislature afterwards makes a special Act in conflict with it, we must assume that the Legislature had in mind its own General Act when it made the special Act, and made the special Act which is in conflict with the general Act, as an exception to the general Act ...

**[17]** Without question, whatever may be the provisions of ss. 407 and 413 of the Criminal Procedure Code, those provisions do not apply to the circumstances of the case on appeal before us. The only provisions of the law applicable are those of the Arms Act 1960. In the context of this appeal, it is s. 53 of the Arms Act 1960 that is material and relevant.

**[18]** In fact, we note that before the Sessions Court, Mr Eric Lau who appeared for the appellant informed the court that "application is under s. 53 of the Arm *(sic)* Act 1960. The application is for the return of the shotgun to the applicant".

**[19]** Section 53 of the Arms Act 1960 is as follows:

> **Seizures and forfeitures**
>
> 53(1) All arms and ammunition in respect of which there has been any offence under this Act or any regulation made thereunder or any restriction or condition subject to or upon which any licence or permit has been granted, shall be seized by any police officer or proper officer of customs and, together with the receptacles containing the same, shall be liable to forfeiture by order of a Sessions Court Judge or a Magistrate:

A Provided that a Sessions Court Judge or a Magistrate may order the arms and ammunition or the receptacles to be released and to be delivered to such person as shall be named in the order, whether or not any person has been convicted of the offence.

(2) All arms and ammunition which may be found without an
B apparent owner shall be seized by any police officer and if, after such notice as a Magistrate may direct, no owner appears, the same may by order of a Magistrate be forfeited.

**[20]** There are three parts to s. 53:

C (a) seizure;

(b) forfeiture; and

(c) release.

D **Issue**

**[21]** We are not concerned here with the seizure of the shotgun and the licence in respect of the shotgun. The shotgun and licence in question were seized when they were surrendered by
E the appellant on 15 March 2000. The appellant was arrested and police investigation did commence.

**[22]** Contrary to the second part of the order of the learned Judicial Commissioner, there was no order of forfeiture made by
F the learned Sessions Court Judge. The issue of correctness or otherwise of the forfeiture of the shotgun is therefore also not relevant to the appeal before us, despite all that is stated in the petition of appeal on the issue of forfeiture.

G **[23]** The issue before us can thus be further narrowed down to the specific issue of whether the decision not to grant the application by the appellant for the return of the shotgun and its licence to him was correctly made by the learned Sessions Court Judge and correctly confirmed by the learned Judicial Commissioner.

H **Analysis Of Issue**

**[24]** The proviso to s. 53(1) of the Arms Act 1960 gives the Sessions Court Judge or Magistrate the power to order the release of any seized arms and/or ammunition to the person named in
I that order. He/she "may" order such release, regardless of whether any person has been convicted of the offence which led to the

arms and/or ammunition being seized in the first place. The person named in the order need not be the person from whom the arms and/or ammunition were seized. A

**[25]** The fact that no one, including the appellant, was ever charged with any offence in relation to the shotgun was not material for the purpose of the exercise by the Sessions Court Judge or Magistrate of his/her power to order (or not to order) the release of the shotgun to the appellant on the appellant's application. B

**[26]** Section 53 is silent as to what matters need to be taken into consideration by the Sessions Court Judge or Magistrate in making a decision whether to release or not to release any arms/ ammunition to any person. It is also silent as to the procedure to be followed by the Sessions Court Judge or Magistrate in the making of such decision. C D

**[27]** However, in the case before us, there was an application filed by the appellant and there were affidavits filed and deponents of the affidavits were cross-examined and re-examined. There was also an additional witness from the Bintulu District Office who gave evidence. E

**[28]** The learned Sessions Court Judge had sufficient information under oath for him to make a decision as to whether he ought to make an order to release the shotgun to the appellant. F

**[29]** The learned Sessions Court Judge and the learned Judicial Commissioner had taken into account the circumstances in which the shotgun was obtained by the appellant and, more importantly, the circumstances in which the replacement and subsequent renewals of the licence for the shotgun were applied for and made. The learned Sessions Court Judge found those circumstances were such that they gave rise to suspicion that the shotgun was obtained by "dubious and surreptitious means". The learned Judicial Commissioner agreed. G H

**[30]** Having read and reread the record of appeal in minute detail, in particular the evidence, both oral and documentary as recorded in the record of appeal, we are unable to find any ground to disturb the findings of the learned Sessions Court Judge and the learned Judicial Commissioner. I

**[31]** We note that the learned Sessions Court Judge and the learned Judicial Commissioner expressed grave concerns as to how an arms licence for a shotgun which had been seized and ordered administratively to be destroyed in the year 2000 could be replaced and subsequently renewed every year. We share their concerns.

**[32]** We are intrigued by the copy of the original licence (p. 72 of the supplementary record of appeal) produced as exh. "C". It shows that the licence was issued in Sibu on 16 December 1998. On 21 April 2006 the licensing officer at Bintulu issued a duplicate licence to replace the licence reported by the appellant in his police report lodged in 2004 to be lost (p. 76, supplementary record of appeal). Both the copy of the original licence and the duplicate issued in 2006 were issued under the Arms and Explosives Ordinance of Sarawak which was already repealed since 1977. While Sarawak executive authorities (including, in this case, the licensing officer at the District Offices of Sibu and Bintulu) have the power to issue and renew licences for arms and ammunition, that power is limited to shotguns and its ammunition and must be under the Arms Act 1960, not under the repealed Ordinance. This is manifestly clear from the provisions of the Sabah and Sarawak (Executive Powers) (Shotguns) Order 1977 (P.U.(A) 259/77).

**[33]** Upon perusing the appeal record we note that the licence book for arms licence No. BTU/1428 shows a record of a series of purchases of ammunition allegedly approved for the shotgun licensed under that licence. We are perplexed as to how ammunition could be purchased 27 times for ten rounds each for a shotgun that was in the possession of the police? Particularly when each purchase of ammunition requires a permit by the police before the purchase.

**[34]** Regulation 6 of the Arms Licensing Regulations 1961 (which were brought into force in Sarawak by the Arms and Explosives (Extension) Order 1977 referred to above) provides that "No licence or permit shall be issued or renewed **unless** the arms in respect of which the licence or permit is required **be produced to the licensing officer or such other officer as the licensing officer may nominate**" (emphasis added).

**[35]** There is nothing in the provisions of the Sabah and Sarawak (Executive Powers) (Shotguns) Order 1977 which allows the licensing officer who is granted power under that order to issue or renew an arms licence under the Arms Act 1960 to dispense with the requirement of reg. 6 of the Arms Licensing Regulations 1961. In fact, CW2, the licensing officer from the Bintulu District Office confirmed this in his evidence.

## Decision

**[36]** In the circumstances as discussed by both the learned Sessions Court Judge and the learned Judicial Commissioner in their respective grounds of judgment and our findings above, we are unanimous in our view that the learned Sessions Court Judge did not err in dismissing the appellant's application for the release of the shotgun to him, and consequently the learned Judicial Commissioner did not err in confirming that decision.

**[37]** We therefore dismiss this appeal.